

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CRYSTAL ALLEN,

Plaintiff,

v.

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CIVIL ACTION NO. 1:12CV156  
(Judge Keeley)

JONDREA NICHOLSON,  
ERIN NORMAN,  
CREE LEMASTERS,  
KIMBERLY JACKSON, and  
JEFFREY HOMER,

Defendants.

ORDER ADOPTING IN PART REPORT AND RECOMMENDATION [DKT. NO. 38]

On October 2, 2012, the pro se plaintiff, Crystal Allen ("Allen"), filed a complaint alleging that three of the defendants had removed her children from her home, placing them in foster care with the remaining defendants, in violation of her civil rights. On October 26, 2012, defendant Jeffrey Homer ("Homer") moved to dismiss the complaint. (Dkt. No. 13).<sup>1</sup> Likewise, Kimberly Jackson ("Jackson") and the remaining defendants moved to dismiss the complaint on October 30, 2012 (dkt. no. 15), and November 1, 2012 (dkt. no. 16), respectively. On February 21, 2013, the Court referred this matter to United States Magistrate Judge John S.

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<sup>1</sup> Homer, who was unrepresented at the time, filed the same motion to dismiss again on March 22, 2013. (Dkt. No. 31). On March 27, 2013, Homer, this time represented by counsel, again moved to dismiss Allen's complaint in a motion that restated the grounds for dismissal set forth in his first two motions to dismiss. See (Dkt. No. 34). Because these motions are essentially the same as the initial motion Homer filed on October 26, 2012, the Court **GRANTS** Homer's initial motion to dismiss (dkt. no. 13), but **DENIES AS MOOT** the latter filed motions. (Dkt. Nos. 31, 34).

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**ORDER ADOPTING IN PART REPORT AND RECOMMENDATION**

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Kaull for initial screening and a report and recommendation pursuant to Title 28, United States Code §§ 636(b)(1)(A) and 636(b)(1)(B) and L.R. Civ. P. 72.01(d)(6). Although the Magistrate Judge issued a Roseboro notice to Allen on February 27, 2013, which she received on February 28, 2013 (dkt. no. 29), she filed no response to the pending motions to dismiss. See (Dkt. No. 26).

On July 2, 2013, Magistrate Judge Kaull issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that the defendants' motions to dismiss (dkt. nos. 13, 15, 16, 31, and 34) be granted and the complaint dismissed because Allen's claims were time-barred. (Dkt. No. 32). Importantly, the magistrate judge observed that the Roseboro notice gave Allen express notice of the defendants' allegations that her complaint was untimely, and thus alerted Allen that her claims were subject to being dismissed if she failed to respond. Id. at 6.

The R&R also specifically warned Allen that her failure to object to the recommendation would result in the waiver of any appellate rights she might otherwise have on the issue. The parties did not file any objections.<sup>2</sup> Consequently, finding no clear error, the Court:

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<sup>2</sup> The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

**ORDER ADOPTING IN PART REPORT AND RECOMMENDATION**

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- (1) **ADOPTS IN PART** the Report and Recommendation (dkt. no. 38);
- (2) **GRANTS** the motions to dismiss found at docket numbers 13, 15, and 16;
- (3) **DENIES AS MOOT** the motions to dismiss found at docket numbers. 31 and 34; and
- (4) **ORDERS** that this case be **DISMISSED WITHOUT PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: July 24, 2013.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE